



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CTI/168567

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 09, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (4), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on September 30, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the tax intercept actions are proper.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

John P. Tedesco  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner was issued a Child Care Overpayment Notice for \$10,137.14 on 8/29/14. This pertained to the period from 2/9/14 to 6/30/14. Petitioner did not appeal.

3. Petitioner was issued a Child Care Overpayment Notice for \$5,645.79 on 11/10/14. This pertained to the period from 7/1/14 to 9/30/14. Petitioner did not appeal.
4. A tax intercept notice was issued to petitioner on 1/16/15 for the amount of \$10,137.14.
5. A tax intercept notice was issued to petitioner on 2/13/15 for the amount of \$5,645.79.
6. Dunning notices were sent on 10/2/14, 11/4/14, and 12/2/14.
7. On 4/17/15 the Department sent a notice to petitioner informing her that \$2,703 would be intercepted from her tax return.
8. All the above notices were sent to the last address on file for the petitioner.
9. Petitioner filed a request for hearing on November 16, 2015.

### **DISCUSSION**

The Department of Children and Families is required to recover all overpayments of public assistance benefits, including child care payments. Wis. Stat., §§49.195(3), 49.155. Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, food stamps, W-2 benefits including child care, and Medical Assistance.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing *to exclude issues* that were presented at a prior hearing or *that could have been presented at a prior opportunity for hearing*.

Italics added. Petitioner was notified of the original overpayment by notice in

Petitioner did not appeal the underlying overpayments. Petitioner did not pay the debt in full. The only payment thus far was the April 2015 inereption. The agency issued a tax intercept dated 5/15/15 as a means of collecting the debt. Petitioner filed her request for hearing on November 16, 2015. The request would have had to have been mailed within 30 days of the tax intercept notices in order to be a timely request. The request was, thus, untimely.

Regardless, it was apparent that petitioner simply wanted a do-over of the merits of the overpayment case. That matter was ripe for appeal at the end of 2014 and no hearing was requested. That opportunity has passed. The tax intercept is proper.

Petitioner testified that she did not get some of the prior notices. But, these were all sent to the addresses the agency had on file for petitioner. There simply is no way to verify that claim. The notices and subsequent dunning notices were sent to petitioner's mailing address and were not returned by the postal service. I conclude that any attempt to appeal the actual overpayment is untimely, and thus the PACU may utilize the tax intercept to recover the overpayment.

**CONCLUSIONS OF LAW**

The appeal is not timely and the Department properly issued the tax intercept.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of December, 2015

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\sJohn P. Tedesco  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on December 10, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit